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AZ CORP COMMISSION
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Arizona Corporation Commission

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JUN - 1 2004

BEFORE THE ARIZONA
CORPORATION COMMISSION

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IN THE MATTER OF THE
APPLICATION OF ARIZONA WATER
COMPANY, AN ARIZONA
CORPORATION, TO EXTEND ITS
EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY
WITHIN THE TOWN OF PINETOP-
LAKESIDE, NAVAJO COUNTY,
ARIZONA

Docket No. W-01445A-04-0013

REPLY IN SUPPORT OF IBEW
LOCAL 387'S APPLICATION TO
INTERVENE

In its "Opposition to International Brotherhood of
Electrical Workers, Local No. 387, Application to Intervene"
which was filed earlier this day, the Arizona Water Company
("AWC") argues that Local Union 387, International Brotherhood of
Electrical Workers, AFL-CIO ("IBEW Local 387") should be denied
intervention in this matter on the grounds that, *inter alia*,
"[t]he IBEW is neither a landowner nor a potential customer in
Company's proposed expansion area" and "there is absolutely no
connection between the relief sought by the Company's application
and the IBEW's status as a bargaining agent." In so doing, AWC
fails to mention, let alone discuss, the undisputed fact that its
bargaining unit employees will almost certainly end up having to
work in the proposed expansion area.

What is more important, AWC overlooks the fact that Article
XV, §3 of the Arizona Constitution expressly states that the

1 interests of public service employees are on par with those of
2 patrons:

3 The corporation commission shall have full
4 power to, and shall... make reasonable rules,
5 regulations, and orders, by which such
6 [public service] corporations shall be
7 governed in the transaction of business
8 within the State, and... make and enforce
9 reasonable rules, regulations, and orders for
10 the convenience, comfort, and safety, and the
11 preservation of the health, of the **employees**
12 and patrons of such corporations[.]

13 (Emphasis added). To the extent that AWC argues that IBEW Local
14 387's Application to Intervene ought to be denied on the grounds
15 that, unlike landowners and potential customers, it has never
16 sought intervention in any of AWC's previous cases, IBEW Local
17 387 suggests that this argument really calls for more active
18 participation from IBEW Local 387 in AWC's cases pending before
19 this Commission, not less.

20 Lastly, in response to AWC's unsubstantiated suggestion that
21 IBEW Local 387's true motivation for seeking intervention in this
22 case stems from a factually unrelated unfair labor practice
23 charge which is currently pending before the National Labor
24 Relations Board, IBEW Local 387 would simply like to point out
25 that such activity, even if true, is clearly protected by the
26 First Amendment to the United States Constitution:

27 ***Congress shall make no law*** respecting an
28 establishment of religion, or prohibiting the
free exercise thereof; or ***abridging the***
freedom of speech, or of the press, or the
right of the people peaceably to assemble,
and to ***petition the Government for a redress***
of grievances.

(Emphasis added). Indeed, the United States Supreme Court has so
held on at least three prior occasions. See, e.g., *California*

1 | *Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510-11
2 | (1972); *United Mine Workers v. Pennington*, 381 U.S. 657, 670
3 | (1965); *Eastern R.R. President's Conference v. Noerr Motor*
4 | *Freight, Inc.*, 365 U.S. 127, 139 (1961) ("The right of the people
5 | to inform their representatives in government of their desires
6 | with respect to the passage or enforcement of laws cannot
7 | properly be made to depend upon their intent in doing so. It is
8 | neither unusual nor illegal for people to seek action on laws in
9 | the hope that they may bring about an advantage to themselves and
10 | a disadvantage to their competitors.")

11 | By its terms, the First Amendment protects "the rights of
12 | people to petition the Government for a redress of grievances."
13 | The United States Supreme Court has found that efforts by Unions
14 | to influence the government are protected by both the
15 | constitutional right to petition and by a right of access
16 | implicit in the representative form of government. Thus, if the
17 | Administrative Law Judge ("ALJ") were to deny IBEW Local 387's
18 | Application to Intervene, not because of the merits of the
19 | request, but rather on the Union's **alleged** motivation for making
20 | the request, then the ALJ would be acting in contravention to the
21 | First Amendment. For as stated by the Ninth Circuit in its 1976
22 | decision in *Franchise Realty Interstate Corp. V. Culinary*
23 | *Workers*, 542 F.2d 1076, 1082, cert. denied, 430 U.S. 940 (1977),
24 | "to condition the right to associate and petition on the
25 | motivations of the petitioners would have a chilling effect on
26 | exercise of this fundamental First Amendment right".

27 | ///

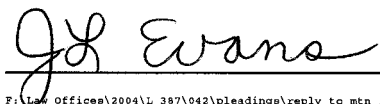
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